

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH RAYMOND BRAUER,

Defendant-Appellant.

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UNPUBLISHED

January 15, 2008

No. 275139

Roscommon Circuit Court

LC No. 06-005142-FH

Before: Fitzgerald, P.J., and Markey and Smolenski, JJ.

PER CURIAM.

Defendant appeals by right after a jury convicted him of assault with intent to commit criminal sexual conduct involving sexual penetration, MCL 750.520g(1), interference with or prevention of telephone communication, MCL 750.540, and domestic violence, MCL 750.81(2). He was sentenced to concurrent prison terms of 54 months to 120 months for assault with intent to commit criminal sexual conduct involving sexual penetration, 15 months to 24 months for interference with or prevention of telephone communication, and 93 days for domestic violence. We affirm. This case is being decided without oral argument under MCR 7.214(E).

Defendant argues that there was insufficient evidence adduced below to prove beyond a reasonable doubt that he committed interference with or prevention of telephone communication. We disagree. We review challenges to the sufficiency of the evidence *de novo*, considering the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Osantowski*, 274 Mich App 593, 612-613; 736 NW2d 289 (2007). “Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime.” *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). We must draw all reasonable inferences and resolve any credibility conflicts in favor of the jury’s verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

Defendant was convicted under the former version of MCL 750.540, which provided as follows:

*Any person* who shall wilfully and maliciously cut, break, tap or make any connection with, or read, or copy, by the use of telegraph or telephone instruments, or otherwise, in any unauthorized manner, any message, either social or business, sporting, commercial or other news reports, from any telegraph or

telephone line, wire or cable so unlawfully cut or tapped in this state; or make unauthorized use of the same, or *who shall wilfully and maliciously prevent, obstruct or delay by any means or contrivance whatsoever the sending, conveyance or delivery, in this state, of any authorized communication*, sporting, commercial or other news reports, *by or through any telegraph or telephone line*, cable or wire under the control of any telegraph or telephone company doing business in this state, or who shall wilfully and maliciously aid, agree with, employ, or conspire with any other person or persons to do any of the aforementioned unlawful acts, shall be guilty of a misdemeanor, punishable by imprisonment in the state prison not more than 2 years, or by a fine of not more than 1,000 dollars. [Emphasis added.]

Defendant's argument is based on his interpretation of this statute. The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature, and the Legislature is presumed to have intended the meaning it plainly expressed. *People v Williams*, 475 Mich 245, 250; 716 NW2d 208 (2006). If statutory language is clear and unambiguous, then a court is required to apply the statute as written. *Id.*

MCL 750.540 was amended by 2006 PA 60 and 61, effective June 1, 2006, and defendant claims that the "prevent, obstruct, or delay" language found in the version applicable to his prosecution was removed. As a result, defendant argues that it can be inferred that the Legislature intended that unplugging a telephone would not fall within the ambit of the statute. Defendant's argument is based on a faulty premise. The current version of the statute retains the "prevent, obstruct, or delay" language in § 540(4), which provides as follows:

A person shall not willfully and maliciously prevent, obstruct, or delay by any means the sending, conveyance, or delivery of any authorized communication, by or through any telegraph or telephone line, cable, wire, or any electronic medium of communication, including the internet or a computer, computer program, computer system, or computer network.

In *People v Hotrum*, 244 Mich App 189; 624 NW2d 469 (2000), this Court interpreted the version of the statute in issue here within the context of the trial court's conclusion "that in order to violate the statute, a person must . . . physically damag[e] a wire outside a residence or building because telephone lines within a residence are controlled by the homeowner rather than the telephone company." *Id.* at 193. The defendant in *Hotrum* had ripped the telephone lines from the wall during a domestic altercation in order to prevent the victim from calling the police. *Id.* The *Hotrum* Court concluded that the plain language of the statute "prohibits using 'any means or contrivance whatsoever' to obstruct or delay the sending of an authorized communication through a telephone line controlled by the telephone company." *Id.* "No language," the Court continued, "in the statute requires that the point of tampering be on a telephone line physically controlled by the telephone company."

Similarly here, no language in the statute requires that the interference of communications be accomplished through some act that breaks or severs the connection in a violent manner. The statute "seeks to punish interference with 'the sending, conveyance or

delivery' of telephone and telegraph communications<sub>[,]</sub>” *id.* at 194, but it does not circumscribe how the interference be accomplished.

Moreover, a rational trier of fact could infer from the circumstances of this case that defendant willfully and maliciously prevented or obstructed the victim, defendant’s former girlfriend, from using the telephone during their altercation. The victim testified that defendant disconnected all three phones when he told her not to call anyone. The temporal connection of the two actions—unplugging the phones and telling the victim not to call anyone—can reasonably be understood as evidence of a willful intent to interfere with her ability to use the telephone to communicate. This conclusion is also supported by the fact that defendant threatened to kill her and her family if she called the police and escorted her from room to room, never leaving her side until the next day. This latter action can be reasonably interrupted as trying to assure that the victim neither left the premises nor attempted to communicate with anyone else by re-plugging the telephones.

We affirm.

/s/ E. Thomas Fitzgerald

/s/ Jane E. Markey

/s/ Michael R. Smolenski